

Judge Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TAM VAN DANG and)
 SANXAY XAYADETH,)
)
 Defendants.)
 _____)

NO. CR05-317P

ORDER RESETTING TRIAL DATE

THIS MATTER having come before the Court on the motion of defendant Sanxay Xayadeth for a competency hearing and the responding motion of the United States for an Order For Psychiatric or Psychological Examination and Report for Defendant Sanxay Xayadeth, and the Court having reviewed the motions and heard the arguments of counsel, and having granted the Government's motion for a competency examination, the Court now finds and rules as follows:

On August 31, 2005, defendants Tam Van Dang and Sanxay Xayadeth were indicted on a charge of conspiracy to distribute ecstasy, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. Defendant Xayadeth also was charged with carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The defendants were arraigned on the charges on September 8, 2005, and trial was scheduled to begin on November 7, 2005.

1 On November 3, 2005, the Court granted the stipulated motion of the parties to
2 continue the trial date, and entered an order continuing the trial to January 23, 2006
3 (docket #31).

4 On December 21, 2005, defendant Sanxay Xayadeth filed a motion requesting a
5 competency hearing and an order finding him not competent to stand trial. The
6 United States responded with a request for a Court-ordered psychiatric or psychological
7 examination pursuant to 18 U.S.C. § 4241(b).

8 The Court held a hearing on the motions on January 10, 2006. After considering
9 the materials submitted to the Court and the arguments of counsel, the Court granted the
10 Government's motion for a psychiatric or psychological examination and report. The
11 Court determined that the matter could not proceed to trial as scheduled on January 23,
12 2006, as additional time would be required for the Court-ordered examination to be
13 completed, a report prepared, and if required, a competency hearing to be held. Due to
14 the need for additional time within which to determine defendant Xayadeth's mental
15 competency and considering the conflicting schedules of counsel, the Court determined
16 that a continuance of the trial date to May 15, 2006, was required.

17 The Court now finds that the period of time between January 23, 2006, and
18 May 15, 2006, is excludable time under the Speedy Trial Act, 18 U.S.C. §§ 3161, et seq.
19 Any period of delay resulting from any proceeding, including any examinations, to
20 determine the mental competency of a defendant is an excludable period of time under
21 18 U.S.C. § 3161(h)(1)(A). In addition, the Court finds that the continuance is necessary
22 to ensure all counsel the reasonable time necessary for effective preparation, taking into
23 account the exercise of due diligence, and to ensure continuity of counsel for all parties.
24 Therefore, the period of delay is an excludable period of time under 18 U.S.C.
25 § 3161(h)(8)(B)(iv). The Court further notes that on January 10, 2006, defendant Dang
26 executed and filed a written waiver of his speedy trial rights through May 25, 2006.

27 Accordingly, the Court finds that the January 23, 2006, trial date shall be stricken
28 and a new trial date of May 15, 2006, shall be set. It appearing to the Court that the

1 failure to reset the trial for May 15, 2006, would effectively deny all counsel the
2 reasonable time necessary for effective preparation, taking into account the exercise of
3 due diligence, and further deny the parties continuity of counsel, and it further appearing
4 to the Court that the ends of justice served by continuing the trial date outweigh the
5 interest of the public and the defendants in a speedy trial,

6 IT IS HEREBY ORDERED that the trial date shall be continued from Monday,
7 January 23, 2006, to Monday, May 15, 2006; and

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1 IT IS FURTHER ORDERED that the period of delay from January 23, 2006, to
2 May 15, 2006, is excludable time pursuant to 18 U.S.C. § 3161(h)(1)(A) and 18 U.S.C.
3 § 3161(h)(8)(B)(iv), for the purpose of computing the time limitations imposed by the
4 Speedy Trial Act, 18 U.S.C. §§ 3161-3174.

5 DATED this 17th day of January, 2006.

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7
8 /S/Marsha J. Pechman
9 MARSHA J. PECHMAN
10 United States District Judge

11 Presented by:

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